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DIGEST OF RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BRYAN v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 477.]

1. Homicide (§§ 151 (1), 254*)—Every Homicide Prima Facie Murder in Second Degree; Defendant Has Burden of Proving Excuse.—Every homicide is prima facie murder in the second degree, and the burden is upon defendant to establish any justification or excuse relied upon by him.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 137.]

2. Homicide (§§ 145, 146, 147*)—Law Presumes Malice, but Not Willfulness, Deliberation, or Premeditation.—The law presumes malice from the fact of killing, but it does not presume that the act was willful, deliberate, and premeditated.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 114, 117.]

3. Homicide (§ 254*)—Verdict for Murder in Second Degree Sustained.—Evidence held to sustain a verdict of guilty of murder in the second degree.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 153.]

4. Homicide (§ 181*)—Previous Unchastity of Defendant's Wife Admissible.—In a prosecution for murder committed by defendant after his wife had confessed illicit relations with deceased, it was not error to admit evidence of the previous unchaste character of the wife.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 138 et seq.]

5. Homicide (§ 181*)—Proof of Truth of Wife's Confession of Illicit Relations with Deceased Held Properly Excluded.—In a prosecution for murder committed by accused after his wife had confessed to him that she had been guilty of illicit relations with deceased, it was not error to exclude proof of the truth of such confession.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 138 et seq.]

6. Homicide (§ 181*)—Defendant's Esteem for His Wife Held Proper Subject of Proof.—In a prosecution for murder, committed by accused after his wife had confessed to him illicit relations with deceased, evidence of suspicions entertained by accused of his wife's

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fidelity prior to the homicide held proper on the issue of the probable effect of the confession upon accused's mind.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 138 et seq.]

7. Criminal Law (§ 866*)—Quotient Verdict as to Punishment for Murder Held Not Reversible Error.—That the jury in a murder trial arrived at the number of years' imprisonment to be imposed by a quotient verdict held not reversible error.

8. Criminal Law (§ 957 (1)*)—Evidence of Jurors as to Mistaken Idea of Punishment They Could Inflict Properly Excluded.—In a prosecution for murder, it was not error to refuse to admit testimony of jurors on the question of whether or not some of them were mistaken as to the punishment they could inflict for murder in the second degree.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 630.]

9. Homicide (§ 308 (2)*)—Omission of Word "Premeditated" in Defining First Degree Murder Held Not Error.—In a prosecution for murder, an instruction held not erroneous because it omitted the word "premeditated" in defining murder in the first degree under Code 1919, § 4393.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 155 et seq.]

10. Homicide (§ 340 (4)*)—Error in Instruction as to Murder in First Degree Held Immaterial on Conviction of Murder in Second Degree.—In a prosecution for murder, that an instruction omitted the word "premeditated" in defining murder in the first degree held not error, where defendant was found guilty of murder in the second degree.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 155 et seq.]

Error to Circuit Court, Botetourt County.

E. B. Bryan was convicted of murder in the second degree, and he brings error. Affirmed.

Haden & Haden, of Fincastle, and *Wm. R. Allen*, of Buchanan, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.